

Contract C3715
Vendor PRIS0001

This Agreement made effective on April 1, 2007.

CONTRACT FOR SERVICES

BETWEEN

THE ATHABASCA UNIVERSITY GOVERNING COUNCIL
(hereafter called the UNIVERSITY)

AND

PRISMATIC GROUP INC.
(hereafter called the CONTRACTOR)

In consideration of the mutual covenants provided for herein, the parties agree as follows:

1.0 Term of Agreement

- 1.1 Subject to paragraph 9.0 herein, the term of this Agreement shall be as set forth in Schedule "A" hereto (the "Term").

2.0 Nature of Services

- 2.1 The CONTRACTOR acknowledges that it has been selected on the basis of its special expertise and competence and that such expertise is a necessary element of the services to be provided by the CONTRACTOR hereunder. The CONTRACTOR shall work in collaboration with the UNIVERSITY and its staff in performing the services set out in Schedule "B" hereto (collectively the "Services").

3.0 Payment

- 3.1 A maximum fee in the amount set forth in Schedule "C" hereto, shall be paid to the CONTRACTOR as provided for in the said Schedule.

4.0 Independent CONTRACTOR

- 4.1 The CONTRACTOR represents that it is a resident Canadian for the purposes of Canadian income tax legislation. If the CONTRACTOR is or becomes a non-resident, the UNIVERSITY shall be authorized to withhold the applicable percentage of payments as required by any such income tax legislation. The

CONTRACTOR shall inform the UNIVERSITY forthwith of any change in its residency status for income tax purposes. The CONTRACTOR shall indemnify the UNIVERSITY for any payments not withheld, but required to be paid pursuant to such legislation, including any interest or penalty assessed thereon.

- 4.2 The CONTRACTOR acknowledges that it is an independent CONTRACTOR and has no authority to enter into any arrangements as an agent for the UNIVERSITY.
- 4.3 The CONTRACTOR shall have authority to exercise exclusive control, direction and management to carry on the Services under its own superintendence and at its own risk, and to provide the Services according to its own means and methods. The UNIVERSITY shall be entitled only to direct the CONTRACTOR with respect to the elements of the Services to be performed by the CONTRACTOR and the results to be derived by the UNIVERSITY, to inform the CONTRACTOR as to where and when such Services shall be performed, and to review and assess the performance of such Services by the CONTRACTOR for the limited purposes of assuring that such Services have been performed in accordance with the requirements of this Agreement and confirming that such results are satisfactory to the UNIVERSITY.
- 4.4 Unless otherwise specified, the CONTRACTOR shall procure from the proper authorities all permits and licenses which may be required for the performance of the Services hereunder, and shall pay all customs, duties, and all excise, license, occupation and other taxes which may become payable to any authority by reason of the Services.
- 4.5 The CONTRACTOR and any employees of the CONTRACTOR shall not be deemed to be at any time employees or servants of the UNIVERSITY. The parties agree that the CONTRACTOR shall be an independent CONTRACTOR in the performance of the Services under this Agreement and that no master and servant relationship is to be created between the CONTRACTOR or any employees of the CONTRACTOR and the UNIVERSITY and further that no employee benefits available to employees of the UNIVERSITY shall accrue to the CONTRACTOR or to any employees of the CONTRACTOR. Accordingly, the CONTRACTOR shall pay and accept full and exclusive liability for the assessments or contributions required by but not limited to the *Alberta Worker's Compensation Act*, *Unemployment Insurance Act (Canada)*, *Canada Pension Plan Act*, and *Income Tax Act (Canada)*, and the CONTRACTOR, as an independent CONTRACTOR, and its employees shall not receive nor be entitled to receive from the UNIVERSITY vacation pay, overtime pay or severance pay in connection with the performance of the Services.
- 4.6 The CONTRACTOR shall be solely responsible for the payment of all income taxes assessed or levied against it.

5.0 Reporting Relationship

- 5.1 For the duration of this Agreement, the formal UNIVERSITY contact between the UNIVERSITY and the CONTRACTOR shall be **Frits Pannekoek, President**, with the day to day UNIVERSITY contact to be **Lori Van Rooijen, Vice President – Advancement**, or such other party as shall be designated by the UNIVERSITY to the CONTRACTOR in writing.

6.0 Assignment

- 6.1 The CONTRACTOR shall not assign or sub-contract any of the obligations undertaken herein except with the written authorization of the UNIVERSITY.

7.0 Intellectual Property Rights and Confidentiality

- 7.1 The CONTRACTOR hereby assigns to the UNIVERSITY all of its rights, title and interest whatsoever throughout the world in and to all copyrighted works, trademarks and any and all other intellectual property or proprietary information prepared or created by the CONTRACTOR through the provision of the Services pursuant to this Agreement (the "Intellectual Property") including the right to apply for copyright, patent or trade-mark registrations, for the full duration of all such rights and any renewals or extensions thereof and further agrees to execute any documents which may be necessary to evidence or support such assignment.
- 7.2 If parties who are not employees of the CONTRACTOR make or have made any contribution to the creation of a "new work" (as that term is used in present or future United States copyright statutes or the Canadian Copyright Act) which comprises or forms part of the Services, the CONTRACTOR shall obtain from such parties a comparable full assignment of rights and waiver of moral rights, including those associated with honour and reputation, without restriction in perpetuity, so that the foregoing assignment by CONTRACTOR vests in the UNIVERSITY full rights in the "new work," free of any claims, interests, or rights of other parties. The CONTRACTOR agrees not to permit any of its employees to obtain or reserve by oral or written employment agreements any rights as "authors" of such "new works". At the UNIVERSITY's request, the CONTRACTOR shall furnish the UNIVERSITY with full information concerning the creation of "new works" and with copies of assignments of rights and waivers obtained from other parties, with the same scope as those granted by the CONTRACTOR.
- 7.3 The CONTRACTOR hereby expressly waives in favour of the UNIVERSITY, all of its moral rights in the Intellectual Property, including those associated with honour and reputation, without restriction in perpetuity and further agrees to execute any documents, which may be necessary to evidence or support such waiver.

- 7.4 The payments referred to in paragraph 3.0 herein are in full and final satisfaction for provision of the Services and the CONTRACTOR agrees and acknowledges that neither it nor its agents, employees or subcontractors are entitled to the payment of any future royalties, residuals or any other payments in connection with the Services and hereby expressly waives entitlement to such payments.
- 7.5 The CONTRACTOR acknowledges that all records, material and information pertaining to the UNIVERSITY and any copies thereof obtained by the CONTRACTOR are and shall remain the exclusive property of the UNIVERSITY.
- 7.6 Except as may be required in connection with filings with government agencies or courts or except as may be required under applicable law, the CONTRACTOR shall keep strictly confidential and shall not disclose to any other party or entity other than its officers and employees on a must know basis or its respective lawyers and accountants, the material terms and conditions of this Agreement. The CONTRACTOR agrees to keep confidential and not disclose or to make use of any confidential information or trade secrets of the UNIVERSITY. The CONTRACTOR shall take all reasonable steps to ensure that the CONTRACTOR and its agents, employees, contractors and subcontractors shall treat as strictly confidential the confidential information and trade secrets of the UNIVERSITY, and in any event shall use no less effort than the CONTRACTOR would use to protect its own confidential information.

8.0 Non-Disclosure and Confidentiality Agreement

- 8.1 The CONTRACTOR shall be required to adhere to the Non-Disclosure/Confidentiality Schedule attached hereto that forms part of this Agreement.

9.0 Termination of Agreement

- 9.1 Notwithstanding anything contained herein to the contrary, the UNIVERSITY may terminate this Agreement without cause upon a minimum of 30 calendar days written notice to the CONTRACTOR of its intention to do so or may terminate this Agreement immediately upon written notice and payment in lieu of 30 calendar days notice.
- 9.2 If the CONTRACTOR defaults in the performance of any of its material obligations as provided for herein and such default shall not be cured within 10 days written notice thereof by the UNIVERSITY, or if the CONTRACTOR becomes insolvent, or if a petition under any bankruptcy act shall be filed by or against the CONTRACTOR which petition, filed against the CONTRACTOR shall not have been dismissed within 30 days thereafter or if the CONTRACTOR takes advantage of any insolvency other like statute (any of the above acts are hereinafter called an "EVENT OF DEFAULT") then the UNIVERSITY may in

addition to any and all other rights it might have against the CONTRACTOR, terminate this Agreement immediately by giving written notice to the CONTRACTOR at any time after the occurrence of such EVENT OF DEFAULT. The CONTRACTOR shall have no other claims and shall take no action against the UNIVERSITY of any kind including, but not limited to, claims for damages or lost opportunity. Notwithstanding such termination, the indemnities, warranties and representations set forth in this Agreement shall remain in full force and effect.

- 9.3 In the event this Agreement is terminated as provided for herein or upon the expiration of the Term, the CONTRACTOR shall immediately thereafter deliver to the UNIVERSITY, at its own expense, any and all information and materials obtained, acquired, created, produced or resulting from or relating to the Services.

10.0 Indemnity

- 10.1 The CONTRACTOR shall indemnify, hold harmless and defend the UNIVERSITY, its servants, agents, employees, invitees and representatives from and against any and all losses, damages, expenses, claims, suits and demands of whatever nature (including legal fees and expenses on a solicitor and client basis) resulting from the breach of any term, condition or provision of this Agreement, and or damages or injuries, including death, to any property or persons caused by or arising out of any negligent or willful act or omission of the CONTRACTOR under this Agreement, whether in connection with the provision of Services or in compliance with its covenants, and also such negligent or willful acts or omissions of the CONTRACTOR'S sub-contractors or any of that party's sub-contractors, respective servants, agents, employees, invitees or representatives.

11.0 Access to Information and Protection of Privacy

- 11.1 **Definitions** - (as stated in the Alberta Freedom of Information and Protection of Privacy Act (the "Act"))

Employee - in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under contract or agency relationship with the public body.

Personal Information or Information - means recorded information about an identifiable individual, including:

- (i) the individual's name, home or business address or home or business telephone number,
- (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
- (iii) the individual's age, sex, marital status or family status,

- (iv) an identifying number, symbol or other particular assigned to the individual,
- (v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,
- (vi) information about the individual's health and health care history, including information about a physical or mental disability,
- (vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,
- (viii) anyone else's opinions about the individual, and
- (ix) the individual's personal views or opinions, except if they are about someone else.

Record - means a record of information in any form and includes notes, images, audio/visual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.

11.2 Access to Information and Protection of Privacy

The UNIVERSITY and the CONTRACTOR are subject to the Act. Records and Personal Information, collected, created, used, disclosed, and disposed of as a result of this Agreement are subject to the provisions of the Act and as such each of the parties hereto covenants and agrees as follows:

- (i) Each of the parties shall provide notification as required by the Act when Personal Information is being collected as a result of this Agreement. The notification shall include the purpose for which the Information is being collected, the specific legal authority for the collection and the title, business address and telephone number of an officer or employee who can answer the individual's questions about the collection.
- (ii) The UNIVERSITY and the CONTRACTOR shall protect Personal Information that is collected, created, and used as a result of this Agreement in accordance with the Act. Records shall be stored in a secure manner, and reasonable security measures shall be taken against such risks as unauthorized access, collection, use, disclosure or disposal.
- (iii) Personal Information collected pursuant to this Agreement shall only be used for the purpose for which it was collected or a consistent use. Any other usage must have the written consent of the individual to whom the Personal Information relates.

- (iv) The UNIVERSITY and the CONTRACTOR shall only disclose Personal Information as required to carry out this Agreement and as provided for in the Act.
- (v) Any Personal Information in the custody of or under the control of either party hereto as a result of this Agreement shall remain in the custody of or under the control of that party and shall be retained and disposed of according to that party's retention and disposition schedule in accordance with the Act.
- (vi) In the event of either party receiving a request for Records or Information covered by this Agreement, each shall make every reasonable effort to assist the applicant by responding to the request according to the provisions of the Act.

12.0 Miscellaneous

12.1 Schedules

All schedules attached to this Agreement are incorporated by reference hereto and shall form terms of this Agreement.

12.2 Notices

Any notice or other communication pursuant to this Agreement required or desired by a party shall be deemed to have been given (or received by the other party) on the date when delivered or sent by confirmed facsimile transmission, personal delivery or three (3) business days after being sent by pre-paid single registered mail to the UNIVERSITY or the CONTRACTOR at the addresses set forth in below:

UNIVERSITY:

Pat Eagar, CMA MBA
Vice-President Finance and Administration
Athabasca University
1 University Drive
Athabasca, AB T9S 3A3
Phone: (780) 675-6909 Fax: (780) 675-6939

CONTRACTOR:

Bill Donahue
Prismatic Group Inc.
#205, 3132 Parsons Road
Edmonton, AB T6N 1L6
Phone: (780) 495-0200 Fax: (780) 439-2369

12.3 Headings

The headings contained in this Agreement are for the convenience of reference only and shall not affect the interpretation or meaning of this Agreement.

12.4 Waiver of Agreement

Failure by either party to insist upon the strict performance of any of the covenants, agreements, terms, provisions or conditions contained in this Agreement or to exercise any election shall not be construed as a waiver or relinquishment of such covenant, agreement, term provision or condition but the same shall continue and remain in full force. No waiver shall be deemed to have been made unless expressed in writing.

12.5 Severability

If any provision of the Agreement is invalid or unenforceable in any circumstance, the remainder of this Agreement, and the application of such provision in any other circumstances, shall not be affected.

12.6 Entire Agreement

This Agreement constitutes the entire agreement between the UNIVERSITY and the CONTRACTOR pertaining to the subject matter, and supersedes all prior agreements, understandings, negotiations, representation and discussions whether oral or written.

12.7 Compliance with Law

The CONTRACTOR shall properly execute and comply with all statutes, rules, orders, ordinances, and regulations of all governmental authorities in providing the Services pursuant to this Agreement.

12.8 Force Majeure

Delays in or failure of performance by either party under this Agreement shall not constitute default hereunder or give rise to any claim for damages if and to the extent caused by occurrences beyond the control of the party affected, including, but not limited to, decrees of government, acts of God, strikes or other concerted acts of workers, inability to procure materials or labour, fires, floods, explosions, riots, war, rebellion, sabotage and atomic or nuclear incidents (hereinafter called "force majeure"), but lack of finances shall in no event be deemed to be a cause beyond a party's control.

In the event that performance of this Agreement in the reasonable opinion of either party is made impossible by force majeure, then such party shall so notify

the other in writing and the UNIVERSITY shall either (a) terminate the Agreement, or (b) authorize the CONTRACTOR to complete the performance of the Services with such adjustments as are required by the existence of the force majeure and are agreed upon by both parties.

12.9 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the University and the CONTRACTOR irrevocably attorn to the jurisdiction of the Courts of the Province of Alberta.

12.10 Survival

The paragraphs titled Intellectual Property Rights and Confidentiality, Indemnity, Termination of Agreement, and Governing Law shall survive termination and expiration of this Agreement.

12.11 Currency

All references in this Agreement to dollars shall be to Canadian dollars unless otherwise indicated.

12.12 Further Assurances

Each party hereto shall from time to time and at all times do such further acts and execute and deliver all further deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

12.13 Inconsistencies

In the event of any inconsistencies or conflicts between the terms of this Agreement and any schedules, appendices or other documents attached to and forming part of this Agreement, the terms of this Agreement shall prevail, unless otherwise stated in the Agreement.

12.14 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties, and their respective legal representatives, successors and assigns.

12.15 Amendments

This Agreement shall not be amended unless such amendment is in writing and signed by both parties.

12.16 Time

Time shall be of the essence in this Agreement.

IN WITNESS WHEREOF the parties have hereunto affixed their signatures the day and year first written above.

THE ATHABASCA UNIVERSITY GOVERNING COUNCIL.

Pat Eagar, CMA MBA
Vice-President Finance and Administration

Witness

CONTRACTOR

Bill Donahue
Prismatic Group Inc.

Witness

Print Name of Witness:

Address

Telephone No.

SCHEDULE “A”

TERM OF AGREEMENT

Subject to Article 9.0, this Agreement shall commence on **April 1, 2007** and shall terminate on **March 31, 2008**.

SCHEDULE “B”

NATURE OF SERVICES

- 1.0 During the Term of this Agreement, the CONTRACTOR shall provide the following Services as required by the UNIVERSITY:

The CONTRACTOR shall lobby government to advance and secure funding and support for Athabasca University’s priority agenda items including:

- A new building in Athabasca;
- A signature building in Edmonton;
- An E-learning Research Institute;
- Policy framework improvements for inter-provincial and international trade; and
- Positioning Athabasca University as an equal university partner in Alberta.

This list may be revised or expanded at the discretion of Athabasca University.

SCHEDULE "C"

PAYMENT

- 1.0 The maximum fee payable pursuant to the terms of this Agreement by the UNIVERSITY to the CONTRACTOR shall be **Thirty Six Thousand Seven Hundred Fifty (\$36,750.00) Dollars, plus any taxes that apply and reimbursement for pre-approved out of pocket expenses**, which shall be paid during the Term by the UNIVERSITY as follows:
- a) installments payable upon satisfactory completion of the services in accordance with Schedule "B" herein;
 - b) upon submission of a detailed invoice(s) by the CONTRACTOR outlining the services completed and the accompanying fee;
 - c) pre-approved expenses reimbursed upon submission of a detailed invoice with original receipts attached; and
 - d) net thirty (30) days, payable by cheque.
- 2.0 The payment(s) provided for in Paragraph 1.0 of Schedule "C" herein shall be conditional upon the satisfactory completion of the Services, such completion to be determined in the sole discretion of the UNIVERSITY acting reasonably.
- 3.0 The form of payment(s) provided for in paragraph 1.0 of Schedule "B" herein shall be by cheque payable to **Prismatic Group Inc.**
- 4.0 It is the obligation of the CONTRACTOR to identify all GST amounts and its GST registration number on the invoice(s).

SCHEDULE "D"

NON-DISCLOSURE/CONFIDENTIALITY SCHEDULE

- 1.01 The CONTRACTOR acknowledges that it will occupy a position of trust and confidence with the UNIVERSITY and may become familiar with confidential or proprietary information or material relating to the operations of the UNIVERSITY including, but not limited to, the following matters:
- i) financial statements and other financial information relating to the UNIVERSITY;
 - ii) information or data relating to chattels, fixtures, product or technology that is owned, used or operated by the UNIVERSITY;
 - iii) student lists, records, and all related data, employee information, or any other personal information (as defined by Alberta or Canadian privacy legislation) of any individual;
 - iv) intellectual property rights;
 - v) all other information regarding the UNIVERSITY, its business, assets, rights, liabilities and obligations which are non-public, confidential or proprietary in nature,
- all of which are collectively referred to in this Schedule as "Confidential Information".
- 1.02 The CONTRACTOR acknowledges the confidential nature and critical importance of maintaining absolute confidentiality and control of the Confidential Information and that it is the sole property of the UNIVERSITY. The CONTRACTOR will be bound by the requirements of the privacy policy of the UNIVERSITY, a copy of which the CONTRACTOR confirms having received.
- 1.03 The CONTRACTOR will indemnify and hold the UNIVERSITY harmless from and against all losses, claims, liabilities, damages, causes of action, judgments, costs and expenses, including legal costs on a solicitor and own client basis and other professional fees, court costs, amounts paid in settlement, or any other liability of whatever nature, whether joint or several, caused by or arising out of, or in any way related to, any disclosure of the Confidential Information by it, or by any person to whom Confidential Information was given, in violation of the provisions of this Schedule. Such indemnity will survive the termination of the Contract for Services.
- 1.04 The CONTRACTOR will not to use any Confidential Information received for any purpose other than in connection with the Services described in the Contract

for Services, without the prior written consent of the UNIVERSITY. The CONTRACTOR will notify the UNIVERSITY of any disclosure of Confidential Information.

- 1.05 The CONTRACTOR undertakes to advise all of its employees, representatives, agents or third parties participating in the provision of the Services of the contents of this Schedule, to obtain their undertaking that they will be bound by all of its provisions in like manner and to identify to such employees, representatives, agents and third parties, the information which is the subject matter of this Schedule; provided however that this clause will not be construed as relieving the CONTRACTOR'S obligation to obtain the UNIVERSITY'S consent where the CONTRACTOR wishes to engage others to assist in the provision of the Services.
- 1.06 If the Contract for Services is terminated, the CONTRACTOR will promptly return to the UNIVERSITY or destroy all Confidential Information (including all notes and materials in any way related thereto) furnished to the CONTRACTOR, without retaining copies, summaries, analysis or abstracts thereof. Prior thereto, the CONTRACTOR will return any or all Confidential Information (including all such related notes and materials) to the UNIVERSITY forthwith on demand, without retaining any copies thereof. The CONTRACTOR will provide written certification attesting to such destruction or return of Confidential Information.
- 1.07 The CONTRACTOR acknowledges that the UNIVERSITY would suffer irreparable harm as a result of breach of any of the non-disclosure and confidentiality clauses contained in this Schedule and that legal remedies are or may be inadequate. Therefore, in addition to any damages and other remedies that the UNIVERSITY may be entitled to at law, equity, tort or contract as a result of such a breach, the UNIVERSITY will be entitled to an order from a court of competent jurisdiction to restrain the CONTRACTOR from breaching or continuing to breach any provisions hereof.
- 1.08 Notwithstanding the foregoing, the CONTRACTOR will be entitled to disclose any of the Confidential Information as may be required by law. Promptly upon receiving any such lawful request and within a reasonable time before disclosure, the CONTRACTOR will notify the UNIVERSITY of the terms and the circumstances of the requested disclosure.
- 1.09 The CONTRACTOR will, in keeping and maintaining the Confidential Information strictly confidential to the CONTRACTOR, take all reasonable steps to ensure that the Confidential Information or any part thereof will not be divulged to any third party. Without restricting the generality of the foregoing, such reasonable steps will include physical security and other security measures (including controls on access, copying and destruction) and confidentiality agreements with the CONTRACTOR'S employees, agents or invitees who are permitted access to Confidential Information.